Supreme Court, U. S.
FILED
NOV 21 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-917

WHITESIDE & COMPANY, ET AL
Petitioners
vs.
NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.
and
THE SECURITIES AND EXCHANGE COMMISSION
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Themselves
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APPENDIX (CITATIONS)

SEC — SECURITIES AND EXCHANGE COMMISSION
NASD — NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

(a) No. 76 - 3318 (SEC No. 12656), August 18, 1977, Judgment, Fifth Circuit Court of Appeals
(b) Per Curiam, August 18, 1977, Decision, Fifth Circuit Court of Appeals, West Publishing Co., pages 5335 - 5339, (Matter of Record.)
(c) Amended Motion, Petitioner, Filed, 1/11/77, Relief of Sanctions, Fine and Costs from National Association of Securities Dealers, Inc.
(d) No. 76-3318, October 31, 1977, Review, Fifth Circuit Court — DENIED
(e) No. 76-3318, September 23, 1977, Review, Fifth Circuit Court — DENIED
(f) NASD, Article III, Section 1, Rules of Fair Practice, Manual, Par. 2151 - 2152
(g) NASD, Decision, September 22, 1975, Board of Governors
(h) NASD, Decision, February 7, 1975, Dist. No. 6, Business Conduct Committee
(i) SEC, Release No. 9856, Rule 15c3-3 (e) (3), page 15 (The Release is Matter of Record)
(j) SEC, Release No. 9856, Rule 15c3-3 (e) (g), page 16 (The Release is Matter of Record)

(k) SEC, Release No. 17056/April 26, 1974, page 2 (The Release is Matter of Record)
(l) SEC Release No. 9856, Rule 15c3-3, Exhibit A, pages 21 and 22, Formula
(m) Petitioner's Withdrawal Computation made July 11, 1974 as of 7/10/74
(n) Petitioner's Deposit, 7/11/74 per Computation 7/09/74 as of June 28, 1974 less Withdrawal Computation (m) for a Net of $22,228.22
(o) SEC Release, No. 12565/June 22, 1976, Rule 15c3-3 Interpretation (Matter of Record)
(p) SEC Release No. 12656/June 22, 1976, Dismissing to NASD (Matter of Record)

REGULATORY PROVISIONS INVOLVED

1. SEC Release No. 9856, Rule 15c3-3/November 10, 1972, Appendix (i) (j)
2. SEC Release No. 10756/April 26, 2974, Appendix (k)
3. SEC Release No. 12565/June 22, 1976, Appendix (o)
4. SEC Release No. 12656/June 22 1976, Appendix (p)
5. NASD Manual, Article III Section 1 and 2, Appendix (f)

OPINIONS BELOW

The opinion of the Fifth Circuit Court of Appeals, August 18, 1977, No. 76-3318, Summary Calendar, Per Curiam, pages 5335-5339 is a matter of record. (Appendix (b)

The opinion of the Fifth Circuit Court of Appeals in respect to motion of petitioner to dismiss with prejudice, Fine, Censure, and Sanctions by the National Association of Securities Dealers, Inc., a private corporation, with reasonable costs to petitioners has not been acted upon. Appendix (c)

A rehearing of the August 18, 1977 opinion was denied September 23, 1977.

A rehearing of the August 18, 1977 opinion was again denied October 31, 1977. Copies of the above included. Appendix (d) and (e)

Securities and Exchange Commission (SEC) opinion is in SEC Release No. 12565/June 22, 1976 and was dismissed (returned to NASD) in SEC Release No. 12656/ June 22, 1976. Matters of Record. Appendix (o) and (p)

National Association of Securities Dealers, Inc. (NASD) Decisions were District No. 6, February 7, 1975 and Board of Governors, September 22, 1975. Appendix (g) and (h)

JURISDICTION

This court's jurisdiction is invoked under 28 U.S.C. Section 1254.

The interpretation of SEC Rule 15c 3-3 (Release No. 9856) is of national importance to thousands of security dealers, a most important industry, and the time of the U.S. Supreme Court is warranted. This is the first interpretation of this Rule 15c 3-3, no previous record.

This writ of certiorari is filed for clarification that the Fifth Circuit did not properly inquire that the "findings

of the NASD Decisions were supported by substantial and convincing evidence."

This writ of certiorari is filed for clarification that Fifth Circuit did not properly inquire that the "findings of the Commission were supported by substantial and convincing evidence."

QUESTIONS PRESENTED FOR REVIEW

NASD QUESTIONS

1. Judgment, August 18, 1977, Appendix (a), was in regard to SEC Release No. 12656/June 22, 1976, Dismissing to NASD Tex No. 248, Appendix (p). Dated January 11, 1977 Petitioners Filed with Fifth Circuit, a First Amended Motion, Relief of Sanctions, Fines and Costs: National Association of Securities Dealers, Inc. with a supporting Brief, Appendix (c). Is it in the responsibility of Fifth Circuit to reach a Decision on the merits of the allegations of the NASD, Tex No. 248, its position of Penalties in respect to Rule 15c3-3, or is Petitioner to pray relief in a U. S. District Court for ascertaining facts and relief of Penalties under Court procedures?

2. Is the operation of SEC Rule 15c3-3 an internal one for the broker-dealer involving the setting aside of cash resources out of Net Capital in a co-mingled Special Bank Account for the Benefit of Customers not involving "principles of trade" with a customer who is probably unaware of such a bank account, Appendix (f)?

3. Does the NASD have rights of "Penalty" (Censure, Fine and Costs) court procedures not provided in Rule 15c3-3 (SEC Rel. No. 9856) even for the SEC much less a private corporation as NASD, Appendix (h)?

SEC QUESTIONS

4. The following statement in a NASD Brief, Pg. 14 NASD Brief to the SEC, Feb. 20, 1976 and confirmed by the SEC is false according to the actual wording of the Rule 15c3-3 (e) (3) page 15 Appendix (i), namely, "The required deposit to the Special Reserve Bank account must be made no later than one hour after the opening of banking business on the second business day following the last day of the month." Does the actual wording of the Rule mean that Computations should be made **at** or **on** last day of month or **as of** on some subsequent day as stated in the Rule, Appendix (i)?

5. Is it improper to take an **as of** Computation for June 30, 1974 made when possible to do so on July 9, 1974, and move it to June 30, 1974 as an **at** Computation with required deposit allegedly due July 2, 1974 (not possible or required by the wording of the Rule), but timely made July 11, 1974, and render a Decision of Non-Compliance, Appendix (h)?

6. Is SEC Release No. 10756/April 26, 1974 page 2, Appendix (k) valid in that the Midwest Stock Exchange Clearing Corporation Reports from Chicago are from Petitioner's most important correspondent involving cash receipts and disbursements of Customers and according to such Release Petitioner had 24 hours posting time after reception?

7. Is Rule 15c3-3 so ambiguous, discriminating toward a small, beginning broker-dealer, violating Fair Trade and Competitive Acts of Congress from the Clayton Acts forward, that it is unenforcible under conditions of clear and convincing application, Appendix (l)?

8. Is SEC Release No. 12565/June 22, 1976, last par. IV page 5, namely: "This is the first case in which we

have interpreted the provisions of Rule 15c3-3. In view of this and other circumstances, we shall exclude this aspect of the case from consideration in determining whether the sanctions imposed by the NASD are excessive" fair notice and disclosure to the Petitioners, Appendix (o)?

9. Is it the province of Fifth Circuit and SEC to ascertain the truth of alleged facts and accusations falsely made? (Reference: Collins Securities Corporation et al v. Securities and Exchange Commission, U.S. Court of Appeals, District of Columbia, No. 75-2200)

10. Is not the withholding of Examination Reports from the Examined a violation of the Freedom of Information Acts?

STATEMENT OF THE CASE

In June, 1974 Petitioner was (and continues) a stock and bond Broker-Dealer operating as a partnership in Lubbock, Texas, a member of the Midwest Stock Exchange (MSE) and Midwest Clearing Corporation (MCC) in Chicago, Ill. and the National Association of Securities Dealers, Inc. (NASD) with supervision responsibility from MSE as per Securities and Exchange Commission (SEC) designation.

Saturday, July 6, 1974, necessary Activity Reports Packet for Friday, June 28, 1974, came via Air Mail from MCC, which are ordinarily two to four days delayed in arriving, came to Petitioner's Post Office July 6 and in Petitioner's office Monday July 8, 1974. (Holidays: June 29, 30, July 4, 6, 7). After postings July 8, 1974, and all night, Rule 15c3-3(e)(3) page 15, monthly, as of June 28, 1974, Computation was made July 9, 1974. Also on July 9, 1974, the Monthly Form "M"

Report as of close of June, was compiled for 10th of month requirement of NASD and 10th business day (July 15) for MSE. Truthfully so, it was checked that Rule 15c3-3(e)(3) Computations required Deposit (due before 10 a.m. July 11, 1974) had not been made. Before 10 a.m. July 11, 1974 a required Deposit of $37,923.56 as of June 28, 1974 was made less a Withdrawal of $15,695.34 as per **as of** July 10, 1974 Withdrawal Computation, Appendix (m), making a Net Deposit of $22,228.22, Appendix (n), curing the situation.

A special NASD Examination was made by a Mr. Watkins the last of July 1974, whose Report was never made available to Petitioners. A Summary Complaint, rejected, and a Formal Complaint was issued by the District Committee as Complainant, Oct. 31, 1974, based on the allegations that (1) Computations made July 9, 1974 was really **at** June 30, 1974 (June 28, 1974 last business day of month) and that "Respondents failed to take appropriate steps after its initial computation at June 30, 1974," and (2) "the Committee — does not believe Respondents have taken all possible action to avoid Rule violations . . . evidenced by the fact that after Respondents were able to compute the reserve requirement at . . . June 30, 1974, the additional required deposit . . . was not made even though Respondents had sufficient funds to make them." Appendix (h).

Regardless of convincing and detailed evidence by Petitioners that **as of** Computation for June 28, 1974 was made on July 9, 1974 when possible to do so and not **at** June 30 (June 28, 1974) which is impossible, before the NASD District Committee, NASD Board of Governors (who added that MCC Reports were not necessary — disputed by SEC), the SEC and Fifth Circuit — all have

improperly held to the contrary even in violation of Rule 15c3-3(e)(3) page 15, Appendix (i) and SEC Release No. 10756/April 26, 1974, page 2, Appendix (j), both of which have been ignored at all levels.

Petitioner has found no appeal hearing Decision willing to investigate the false statements of the Dist. No. 6. Committee Decision or claim any power to correct, being content to repeat and compound them. Petitioner feels the Fifth Circuit, the first court of hearing has the responsibility of determining "substantial and convincing evidence."

SUMMARY OF ARGUMENT

(1) Take a Rule 15c3-3(e)(3) Computation made July 9, 1974, **as of** June 30, 1974, (according to the Rule) when it was possible to make one, and move it back improperly by Decision, Tex 248, February 7, 1975, to an "**at** Computation June 30, 1974, instead of **as of,** ruling violation for not making a Deposit July 2, 1974 (by 10 a.m. of the second day thereafter; (2) then ruling "bad faith" and "willful" violation for not making a Deposit on July 11, 1974 after Respondent was able to make a Computation (when Respondent did make the required Deposit, July 11, 1974); (3) Penalize by Censure, Fine and Costs Respondent for "acts . . . contrary to high standards of commercial honor and inconsistent with just and equitable principles of trade" when no trade was involved or "a customer harmed"; and, (4) Board of Governors ruling that Midwest Stock Exchange Reports were unnecessary as Respondent is responsible for keeping all records necessary for Compliance regardless of Clearing Corporation Activity Reports — and you have the falsification in summary of the charges made against Petitioners — to be sure not "clear and convincing evidence" required at all levels of Appeal made by Petitioners according to Administrative Laws.

ARGUMENT

This is the first case of interpretation of SEC Rule 15c 3-3 by the SEC. Like others this is first disclosure to Petitioner.

As usual Petitioner made a monthly Formula Computation as per Rule 15c 3-3 (e)(3) Page 15 when data was available on **as is** basis (as is any Balance Sheet) as called for by the Rule. Petitioner was dependent on Midwest Stock Exchange Clearing Corporation (MCC) for cash (via telephone) and activity (via Air Mail) reports for end of month of June (June 28, 1974), received in Petitioner's office Monday, July 8, 1974, because of delay of operation of MCC and Air Mail delay. Five holidays intervened, two Fridays and Saturdays plus July 4 (Thursday). Absenteeism in MCC and others must be the trouble as end of June reports have been delayed two days for cash reports and four to eight days for activity reports every year 1974, '75, '76 and '77.

The Rule 15c 3-3 (c)(3) ignored by all Decisions, anticipated these delays placing computations on **as is** basis. Not only delays would be in the framework of that which is possible but SEC Release No. 10756/April 26, 1974 page 2 "Time Lag in Transmission of Data," ignored by all Decisions, provides for accounting for these extraordinary delays - reception plus 24 hours posting time. This would give Petitioner to July 9, 1974 to record. Petitioner, as per usual custom, made the computation as of June 28, 1974 on July 10, 1974, when Form M Monthly Report due as per Release No. 10756 no later than 10 business days after the close of month. MCC is not a bookkeeping Service Bureau.

The NASD and SEC has held that the Rule meant that Computations must be made **at** or **on** June 28, 1974 not

only an impossibility but is not Rule 15c 3-3 (e)(3) page 15 dictated. Furthermore Petitioner's Computation **as of** June 28, 1974 made on July 10, 1974 was improperly and falsely taken as **at** June 28, 1974 requiring a Deposit of the needed amount July 2, 1974 days before Petitioner knew of what amount was required.

NASD, Board of Governors, endorsed by SEC, that MCC data was not necessary for Computation purposes, a contradiction of SEC Release No. 12565/June 22, 1976 and the Rule 15c 3-3 (e)(3) itself (**as of** basis) and an improper attempt to establish Computation time **at** or **on** end of month.

The NASD District 6 Decision, February 7, 1975 recognizing the necessity of MCC Data and its delay held that "even after Respondents (the Petitioner) were able to make the Computation" Respondent did not make Deposit but the Petitioner did deposit on July 11, 1974 the requisite Deposit (even a day earlier than required) as shown in Appendix (m) (n) SEC Appendix, Fifth Circuit, pages 066 and 067 and recognized on page seven of the Decision that deposit was made.

Not to be outdone the SEC, which should be upholding its reputation for truth in reporting, suggested that compliance was so important that an extra deposit like $100,000 to take care of any potentiality should be kept in the Special Reserve Deposit for the Benefit of Customers. In other words, a fictitious Cash Reserve of $100,000 or less for Customer Cash Liabilities should be kept (an extra 5% in Formula is of doubtful validity in the face of other might be creditors). (SEC Brief to Fifth Circuit, page 26; 37).

Rule 15 c 3-3 does not provide for a violation penalty. For the NASD to apply a "Penalty" for a non-trade

alleged infringement is not the meaning or intention of Article III, Section 1, and is improper. Rule 15c 3-3 (e)(3) application which is an internal net, co-mingled, cash reserve set aside in a special Bank Account, does not involve a particular customer or broker trade. No customers were harmed. (Ref. 7/07/76 De Felice and Associates, Charlotte, North Carolina were "no Investors were harmed").

In the working of the Formula of Rule 15c 3-3 a definite Cash Deposit in a Special Reserve Bank Account for co-mingled Customer Cash Liabilities is made out of Net Capital Cash. After the payment out of other Cash Resources in the liquidation of these liabilities then cash from the Special Reserve Account can be retrieved. This is double "jeopardy" for a "single" liability, i.e. the Customer Cash Liability. Unrestricted Cash as a Debit is conspicuous by its absence in the Formula. Allowing exclusive use of Customer Cash Liability in fact by investment in "safe area" of Margin Accounts is neither "liquid" or "safe" but is a decided discrimination in favor of the existing broker with large investment in Margins and allows such a broker "free use of customer cash liabilities." This is a decided elimination of the beginning broker without a "built up" margin account.

The wordings of Note A and Note B in Formula are not understandable.

The intention of Rule 15c 3-3 to inhibit the beginning broker to be (1) fully disclosed through another broker or (2) carry no Margin Accounts is an illegal competitive restriction. Under the guise of protecting customer liabilities it is really a restriction of the growth of the broker who has insufficient margin accounts. The broker with large margin accounts has no deposit requirement,

no worry of Rule 15c 3-3 and gets free use of the customer liability funds.

There was no Computation at or on June 28, 1974, or any other end of month, and cannot be made, no Deposit Balance requirement of $52,854 on July 2, 1974 (SEC Release No. 12565/June 22, 1976, V, page 5) (Per Curiam (1) page 5337, third paragraph) NASD Decision February 7, 1975, Tex-248). If Rule 15c3-3 (e)(3) page 15 means that Computations should be made on or at the last day of the month, then Petitioner should have been held in violation of **No** Computation and **No** Deposit instead of being held in violation of a Deposit Balance of $52,854 arrived on an **as is** basis, July 9, 1974, after data was available. In other words, it is improper to take an **as of** Computation (July 9, 1974) and move it back to June 28, 1974, for a Decision of violation on an **at** basis. **No Computation violation was ever alleged.**

It is clearly shown that no re-computation was made on July 11, 1974, but one for Withdrawal Purpose, as of previous day, (Rule 15c 3-3 (g) page 16) and a Net Deposit of $22,228.22 was made.

The question of misstatements of facts is a serious question, at least 13 misstatements in SEC Release No. 12565/June 22, 1976 and repeated in Fifth Circuit Court Judgment, Per Curiam, Aug. 18, 1977.

1. Customers' cash prepayments before Settlement Dates were for Confirmations issued and Purchases already made and not for payments for Purchases to be made, or "subsequent purchases." (Per Curiam page 5336, 6-55)

2. Purchases have to be made, Settlement Dates established, and Settlement Date passed in order that "customer's securities failed to receive" accrue. Customer

"prepayments were not" fails. (Per Curiam page 5339, 4.)

3. If Rule 15c3-3 is regulatory, not penal (Per Curiam, page 5338, 3) how can NASD, in absence of court action, assess "Penalty."?

4. No trade practice is involved in the operation of Rule 15c3-3 in setting aside an internal reserve.

5. Petitioners made the **as of** Computation on July 9 as per Rule never "conceded a failure to make the June computation at June 30 or 28th as their own fault." (SEC Release No. 12565, VI)

6. When Petitioners did make the timely computation on July 9 as of June 30, they did deposit timely on July 11 the required deposit and immediately Withdrew as per Computation as of July 10, 1974 to leave a Net increase in Deposit of $22,228.22.

7. Petitioners never sought to excuse any of its operations because of absence of or operation of subordinate personnel.

8. Petitioners were never aware of the "warnings" allegedly given or stated they were "toying around with the twenty-four hour rule" or "ignore in certain respects the requirements of 15c3-3 (e) and (i)" or "given the **attitude** of applicants, the institution of formal disciplinary proceedings and imposition of penalties are fully necessary" or "they could have made a deposit to cover estimated requirements" or "they could easily have gotten it (MCC data) faster," "telecopier facilities, private express delivery or telephone communication from an agent in Chicago" all of which were not available to Petitioners.

9. The demands are incorrectly based on the assumption that the Rule 15c3-3(e)(3) reads "at or on" end of

month when it states "as of."

10. Petitioner did not send notice of its failure to make required deposit and none was needed as Petitioner timely made Computation and Deposit regardless of all that is written improperly to the contrary.

11. Petitioner is informed there is no Record of the Hearing before the SEC May 11, 1976 and the Reporter of the Jan. 7, 1975 "Hearing" before Dist. 6 NASD Committee states he has no copy available.

12. Petitioners found it impossible to follow NASD dictation that the Rule required Computations at or on June 30, 1974, even make retroactive deposit requirement, July 2, 1974, either as a matter of possibility or existing Rules and Releases. The same for the SEC. Furthermore, NASD and SEC, insistence of inclusion of proprietary accounts in Formula, as proprietors are not customers, was the source of "corrected" computation figures for June 30, 1974 and other months.

13. Petitioner wishes to be heard. Decisions have no likeness of "Hearings" held. Incorrect statements are made and repeated, compounded, questions not answered. Petitioner is quoted as against Customer Protection. Rule 15c3-3 does not provide that. Nobody understands the Rule. The SEC wrote the Rule, judges through its Staff the so-called interpretation of the Rule. In this case the interpretation is not what the Rule states and ignores its own Rule and Releases and is the sole interpreter, leaving out facts, misstatement of evidence to its choosing, even to the point of lack of professional integrity and responsibility — violating the moral standards the SEC expects of others.

CONCLUSION

For the foregoing reasons, plus the basis of "clear and convincing evidence" in the recent Collins Securities Corporation et al v. Securities and Exchange Commission, U.S. Court of Appeals, District of Columbia No. 75-2200, Petitioner, Whiteside and Company and Clarence K. Whiteside and William H. Whiteside, request that a Writ of Certiorari be issued to the Fifth Circuit Court of Appeals, New Orleans, Louisiana as presented.

Respectfully submitted,

WHITESIDE AND COMPANY, Petitioner

Clarence K. Whiteside, Partner

William H. Whiteside, Partner

Copies to:

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APPENDIX (a)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term 1976

No. 76-3318

SEC No. 12656

WHITESIDE AND COMPANY, CLARENCE K. WHITESIDE and WILLIAM H. WHITESIDE,

Petitioners

versus

SECURITIES AND EXCHANGE COMMISSION, Washington, D. C.

Respondent

Petition for Review of An Order of
the Securities and Exchange Commission (Texas Case)

Before THORNBERRY, RONEY and HILL,
Circuit Judges.

JUDGEMENT

This cause came on to be heard on the petition of Whiteside and Company, Et. Al. for review of an order of the Securities and Exchange Commission, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the Securities and Exchange Commission in this cause be, and the same is hereby affirmed.

Issued as Mandate: August 18, 1977

APPENDIX (b)

WHITESIDE & COMPANY et al., Petitioners, 5335
v.
SECURITIES AND EXCHANGE
COMMISSION, WASHINGTON, D.C., Respondent
No. 76-3318
Summary Calendar.*
United States District Court,
Fifth Circuit.
Aug. 18, 1977

A broker dealer filed petition for review of an order of Securities and Exchange Commission which affirmed the imposition of disciplinary sanctions by the National Association of Securities Dealers, a self-regulatory organization. The Court of Appeals held that: (1) Court of Appeals review was limited to question of whether Commission's decision that broker dealer had violated rules of fair procedure of the Association was supported by substantial evidence and whether the Commission decision finding that Association sanctions were not excessive was arbitrary; (2) substantial evidence supported finding that broker dealer violated Commission rule, and consequently rules of fair practice of Association, by failure to make a required deposit in a special reserve account following computation of a new credit balance and subsequent failure to immediately notify the Commission, the Securities Investor Protection Corporation and other regulatory bodies by telegram, and (3) notwithstanding that Commission recognized that excuses expounded by broker dealer were mitigating factors in consideration of sanctions to be imposed, conclusion that sanctions were appropriate was not arbitrary or an abuse of discretion in light of fundamental nature of the reserve account system to the safeguarding of customers' funds. Affirmed.

Adm. Office, U.S. Courts - West Publishing Company,
Saint Paul, Minn.

APPENDIX (c)

No. 76-3318

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Whiteside & Company, Clarence K. Whiteside and
William H. Whiteside
Appellants/Petitioners
v.
Securities and Exchange Commission
and
National Association of Securities Dealers, Inc.
Appellees/Respondents

Petition for Review of Orders:
Securities and Exchange Commission,
Washington, D.C.
Release No. 12656 - June 22, 1976
Release No. 12565 - June 22, 1976
National Association of Securities
Dealers, Inc., Washington, D.C.
NASD, Decision, September 22, 1976
(NASD Committee Dist. 6, Tex.
248, Decision February 7, 1975)

Petition Filed: 8/18/76; Brief Filed: 10/26/76; Reply Brief to SEC

First Amended Motion:
Relief of Sanctions, Fines and Costs:
National Association of Securities Dealers, Inc.,
Washington, D.C.

ON BEHALF OF
WHITESIDE & COMPANY, PARTNERS:
Clarence K. Whiteside
William H. Whiteside
Appellants

Of Counsel:
Themselves

Date 1/11/17

APPENDIX (d)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 76-3318

WHITESIDE AND COMPANY,
CLARENCE K. WHITESIDE and
WILLIAM H. WHITESIDE,

Petitioners,

versus

SECURITIES AND EXCHANGE
COMMISSION, Washington, D.C.,

Respondent.

Petition for Review of an Order of the
Securities and Exchange Commission
(Texas Case)

Before THORNBERRY, RONEY and HILL,
Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellants' motion for relief of sanctions, fines and costs is denied.

Filed Oct 31 '77

APPENDIX (e)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 76-3318

WHITESIDE AND COMPANY, CLARENCE K.
WHITESIDE and WILLIAM, H. WHITESIDE,

Petitioners,

versus

SECURITIES AND EXCHANGE
COMMISSION, Washington, D.C.,

Respondent.

Petition for Review of an Order of the Securities and
Exchange Commission
(Texas Case)

ON PETITION FOR REHEARING
(September 23, 1977)

Before THORNBERRY, RONEY and HILL,
Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

James C. Hill
United States Circuit Judge

APPENDIX (f)

NASD Manual

ARTICLE III

Rules of Fair Practice

¶2151 Business Conduct of Members

Sec. 1. A member in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

. . . Cross References

"Filing of Misleading Information as to Membership or Registration" ..... ¶ 1104
"Failure to Register Personnel" ..... ¶ 1622
"Fair Dealing with Customers" ..... ¶ 2152

¶2152 Recommendations to Customers

Sec. 2. In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

APPENDIX (g)

NASD, Decision, Sept. 22, 1975, Board of Governors
(Concluding Statement)

We have carefully considered the entire record in this matter, including the testimony of respondent, his brief and other correspondence, and we believe that the findings and penalties of the District Committee are proper. We cannot accept the contention that mail delays interfered with the member's ability to comply with Rule 15c3-3. It is our belief that it is the responsibility of every member to make and keep whatever records are necessary for compliance, and whatever delays or difficulties there may be as a result of the operations of outside organizations, such as clearing corporations, do not relieve members of this responsibility. Compliance with the provisions of the Commission's customer protection rule (15c3-3) is of paramount importance for all Association members. Accordingly, we hereby affirm the findings of violations, the penalties imposed, and the costs assessed by the District Committee. In addition, we assess costs of this appeal in the amount of $791.85, jointly and severally, upon respondents.

On Behalf of the Board of Governors,

By Thomas D. Walsh, Secretary

APPENDIX (h)

NASD, Decision Complaint No. Tex - 248, FEB. 7, 1975

SEC Rule 15c3-3(e)3 requires that a broker-dealer making monthly computations under the rule must make the computation **as of** the close of the last business day of the month and if a deposit is required that it be made no later than one hour after the opening of banking business on the second following business day.

It is obvious that Respondents failed to observe these requirements after its January, May and June, 1974 computations. Only after the Association contacted Respondents on July 11, 1974* did they take action by making a subsequent computation and a deposit;* however as discussed earlier in the Decision, Respondents failed to take appropriate steps after its initial computation at June 30, 1974.

The Committee finds Respondents violated Article III, Section 1 of the Rules of Fair Practice as charged.

The Committee further finds Respondents acts to be contrary to high standards of commercial honor and inconsistent with just and equitable principles of trade.

PENALTIES

In assessing a penalty, the Committee has considered the fact that Respondents have been cautioned on at least two prior occasions, including one letter of caution, of its failure to make required deposits. Although the Committee is cognizant of Respondent Member's problem in obtaining prompt record keeping information

*A deposit as of June 30, 1974 less Withdrawal **as of** close of July 10, 1974 for a Net Deposit of $22,228.32 was made. SEC Appendix to Fifth Circuit pages 066 and 067. (Petitioner's explanation)

from the Midwest Stock Exchange because of mail delays, it does not believe Respondents have taken all possible action to avoid Rule violations with respect to SEC Rule 15c3-3. This is evidenced by the fact tht even after Respondents were able to compute the reserve requirement at January 31, May 31 and June 30, 1974, the additional required deposits were not even made though Respondents had sufficient funds to make them.*

Therefore, it is the decision of this Committee that Respondents Whiteside & Co., Member, Clarence K. Whiteside and William H. Whiteside, Registered Principals, be censured, fined $1,000 and assessed costs, jointly and severally.

COSTS

Hearing Expenses	$381.91
Printing of Decision	55.00
Total	$436.91

DISTRICT BUSINESS CONDUCT COMMITTEE FOR DISTRICT NO. 6

By: Wm. Stewart Storie, Chairman

APPENDIX (i)

SEC Release No. 9856 (Rule 15c3-3)(e)(3) Page 15

(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than one hour after the opening of banking business on the second following business day; provided, however, a broker or dealer which has aggregate indebtedness not exceeding 800 per centum of net capital (as defined in Rule 15c3-1 or in the capital rules of a national securities exchange of which it is a member and exempt from Rule 15c3-1 by subparagraph (b)(2) thereof) and which carries aggregate customer funds (as defined in paragraph (a)(10)), as computed at the last required computation pursuant to this rule, not exceeding $1,000,000, may in the alternative make the computation monthly, **as of** the close of the last business day of the month, and, in such event, shall deposit not less than 105 per centum of the amount so computed no later than one hour after the opening of banking business on the second following business day.

APPENDIX (j)

SEC Release No. 9856, Rule 15c3-3(e)(g) page 16

(g) Withdrawals from the Reserve Bank Account.

A broker or dealer may make withdrawals from his Reserve Bank Account if and to the extent that at the time of the withdrawal the amount remaining in the Reserve Bank Account is not less than the amount then required by paragraph (e). A bank may presume that any request for withdrawal from a Reserve Bank Account is in conformity and compliance with this paragraph (g). On any business day on which a withdrawal is made, the broker or dealer shall make a record of the computation on the basis of which he makes such withdrawal, and he shall preserve such computation in accordance with Rule 17a-4.

(h) **Buy-In of Short Security Differences.**

A broker or dealer shall within 45 calendar days after the date of the examination, count, verification and comparison of securities pursuant to Rule 17a-13 or otherwise or to the annual report of financial condition in accordance with Rule 17a-5, buy-in all short security differences which are not resolved during the 45 day period.

(i) **Notification in the Event of Failure to Make a Required Deposit.**

If a broker or dealer shall fail to make in his Reserve Bank Account or Special Account a deposit, as required by this rule, the broker or dealer shall by telegram immediately notify the Commission, the Securities Investor Protection Corporation, and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and shall promptly thereafter confirm such notification in writing.

APPENDIX (k)

SEC Release No. 10756/April 26, 1974, page 2

Trial Balances and Capital Computation

Subparagraph (11) requires the monthly preparation of a trial balance of all ledger accounts and a computation of aggregate indebtedness and net capital as of the trial balance date. These records should be prepared no later than 10 business days after the end of the accounting period, except in those instances where the records must be prepared in a lesser period to satisfy any reporting requirements established by any self-regulatory authority of which the broker-dealer is a member. 8/

Other Records

The record of beneficial ownership of each cash or margin account (subparagraph (9) of Rule 17a-3) should be prepared before transactions are effected in an account. The employment questionnaire or application (subparagraph (12) of Rule 17a-3) should be prepared at or prior to the commencement of employment.

Time Lag in Transmission of Data

Under certain limited circumstances the accounting department of a broker-dealer may not be aware of a transaction until a few days after it occurs. Transactions such as receipts and disbursements in out-of-town branches or by correspondents should be recorded no later than the day after the transaction is reported to the accounting department, and dividend and interest claims from other brokers should be recorded no later than the day after the validity of the claim is established.

APPENDIX (l)

FORMULA FOR DETERMINATION
of
RESERVE REQUIREMENT FOR BROKERS
AND DEALERS

Under Rule 15c3-3

	Credits	Debits
1. Free credit balances and other credit balances in customers' security accounts. (See Note A)	$XXX	
2. Monies borrowed collateralized by securities carried for the accounts of customers.	XXX	
3. Monies payable against customers' securities loaned.	XXX	
4. Customer's securities failed to receive.	XXX	
5. Credit balances in firm accounts which are attributable to principal sales to customers.	XXX	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days.	XXX	
7. Market value of short security count differences over 30 calendar days old.	XXX	
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.	XXX	

Note A

Item 1 shall include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and shall also include checks drawn in excess of bank balances per the records of the broker or dealer.

	Credits	Debits
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transer by the transfer agent or the issuer during the 40 days.	$XXX	
10. Debit balances in customer's cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note B.)		$XXX
11. Securities borrowed to effectuate short sales by customers and securities on customers' securities failed to deliver.		XXX
12. Failed to deliver of customers' securities not older than 30 calendar days.		XXX
	Total Credits	Total Debits
	$_____	$_____
13. Excess of total credits (sum of items 1-9) over total debits	$_____	

(sum of items 10-12) required to be on deposit in the "Reserve Bank Account" (15c3-3 (e)). If the computation is made monthly as permitted by this rule, the deposit shall be not less than 105% of the excess of total credits over total debits.

Note B

(1) Debit balances in margin accounts shall be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15% of the aggregate value of all securities which collateralize all margin accounts receivable; provided, however, the required reduction shall not be in excess of the amount of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin account only to the extent it represents in value not more than 140% of the customer debit balance in a margin account.

(2) Debit balances in customers' cash and margin accounts included in the formula under item 10 shall be reduced by an amount equal to 1% of their aggregate value.

APPENDIX (m)

WITHDRAWAL COMPUTATION

DATE: 7/10/74

FORMULA FOR DETERMINATION OF RESERVE REQUIREMENT FOR BROKERS AND DEALERS UNDER RULE 15c3-3

	CREDITS	DEBITS
(1) Free Credit Balances and Other Credit Balances in Customers' Security Accounts.	30,900.55 1,564.93	
(4) Customers' Securities Failed to Receive.	39,624.88	
(10) Debit Balances in Customers' Cash and Margin Accounts excluding all Unsecured Accounts and Accounts Doubtful of Collection.		29,942.07 9,937.06
(12) Failed to Deliver of Customers' Securities not older than 30 days.		921.10
TOTALS	72,090.36	40,800.23

EXCESS of Total Credits over Debits	$31,290.13
RESERVE account Balance	9,061.91
DEFICIT/EXCESS	22,228.22

Check #01967, Dtd 7/11/74, Deposit in Lubbock National Bank Reserve Account.

APPENDIX (n)

TO THE CREDIT OF
WHITESIDE AND CO. - SPECIAL
1510 AVE L 747 0251
P O BOX 2956
LUBBOCK, TEXAS 79408

DEPOSITED IN
THE LUBBOCK NATIONAL BANK

Lubbock, Texas, 7/11, 1974

NOTICE – THIS DEPOSIT IS ACCEPTED ONLY ON CONDITIONS PRINTED ON COVER OF DEPOSIT SLIP BOOK, AND ON DEPOSITOR'S SIGNATURE CARD.

	Dollars	Cents
CURRENCY		
SILVER		
CHECKS AS FOLLOWS		
[illegible]		
[illegible]		
[illegible]		
[illegible]		
[illegible]		
[illegible]		
[illegible]		
Whiteside & Co Set	22228	22
TOTAL $	22228	22

:0720=858=6" :1:1111=12722:

APPENDIX (o)

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 12565/June 22, 1976

Admin. Proc. File No. 3-4790

In the Matter of the Application of

WHITESIDE & COMPANY
1510 Avenue L
Lubbock, Texas

and

CLARENCE K. WHITESIDE
WILLIAM H. WHITESIDE

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION
— REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Failure to Make Appropriate Deposits in Special Account for benefit of Customers

Where member of registered securities association and its two partners failed to make required deposits in special account for the exclusive benefit of the firm's customers and did not send immediate telegraphic notice of those failures, association's findings of violation and sanctions imposed therefor **affirmed.**

APPEARANCES:

Clarence K. Whiteside, for applicants.

Lloyd J. Derrickson* and **John F. Mylod, Jr.,** for the National Association of Securities Dealers, Inc.

Review proceedings with respect to a decision dated September 22, 1975, by the Board of Governors of the National Association of Securities Dealers, Inc. Oral argument heard on May 11, 1976.

*Not present - Petitioner's statement

APPENDIX (p)

34-12565

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 12656/June 22, 1976

Admin. Proc. File No. 3-4790

In the Matter of the Application of

WHITESIDE & COMPANY
1510 Avenue L
Lubbock, Texas

and

CLARENCE K. WHITESIDE
WILLIAM H. WHITESIDE

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER DISMISSING REVIEW PROCEEDINGS

On the basis of the Commission opinion issued this daye, it is ORDERED that these review proceedings be, and they hereby are, dismissed. By the Commission.

Geroge A. Fitzsimmons
Secretary